
**In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division**

In the matter of:)	
)	Adversary Proceeding
ROY L. ALLEN, II)	
a/k/a Roy Allen, Jr.)	Number <u>99-4154</u>
(Chapter 7 Case <u>98-40838</u>))	
)	
<i>Debtor</i>)	
)	
)	
DELORES ROBINSON,)	
Individually and as Executrix)	
of the Estate of Daisy Quarles)	
)	
<i>Plaintiff</i>)	
)	
)	
v.)	
)	
ROY L. ALLEN, II)	
a/k/a Roy Allen, Jr.)	
)	
<i>Defendant</i>)	

MEMORANDUM AND ORDER

FINDINGS OF FACT

Plaintiff is the duly appointed Executrix of the Estate of Daisy Quarles who died on or about March 3, 1997. Daisy Quarles in turn had been the Executrix of the Estate of Lucy Dough. Following the death of Daisy Quarles, Plaintiff Delores Robinson also took on the responsibilities of winding up the Estate of Lucy Dough.

In connection with the handling of the said Estates, Plaintiff retained Debtor/Defendant Roy L. Allen, II, to act as her attorney and to assist her in the administration of the Estates. The Debtor/Defendant had already been involved in the Estate of Lucy Dough as counsel for Daisy Quarles.

In the course of his representation of Plaintiff, Defendant received at least \$85,819.25 in funds belonging to the Estate of Daisy Quarles, the Estate of Lucy Dough and/or Plaintiff Delores Robinson individually.

Debtor/Defendant, while acting in a fiduciary capacity, supposedly deposited the said funds into his trust account.

From the funds supposedly deposited into his trust account, Defendant was to make certain distributions on behalf of the Estates. Plaintiff was to receive the bulk of the Estates. Ultimately, Defendant took the funds and used them for his own purposes.

On June 25, 1998, Defendant, with counsel, appeared before the Honorable Penny Haas Freesemann in the Superior Court of Chatham County, Georgia, to answer to a thirteen count criminal accusation.

In Count Eight of the accusation, Defendant was charged with Theft by Taking for failing to disburse to Plaintiff the sum of \$85,819.25 and unlawfully expending the said funds.

In responding to the accusation, Defendant was required to respond under oath to a series of interrogatories. Question Number 5 stated: “Do you understand that you are charged with Theft by Taking (13 cts)?” Defendant responded “Yes.” Question Number 15 stated: “How do you plead to (each of) the charge(s), Guilty or Not Guilty?” The Defendant responded “Guilty.” Question Number 16 stated: “Are you in fact guilty?” The Defendant responded “Yes.”

Defendant made several similar *in judicio* admissions regarding Defendant’s conduct in this matter.

CONCLUSIONS OF LAW

Defendant has admitted that he was in fact guilty of theft by taking the sum of \$85,819.25 from Delores Robinson (individually and in her official capacity).

Defendant is not entitled to any fee (or credit for any fee) for the work completed in the case as the only person to benefit from the work was the Defendant himself.

Defendant’s admitted actions constitute money obtained by “false pretenses, a false representation or actual fraud” within the meaning of 11 U.S.C. § 523(a)(2)(A). As such Defendant’s debt to Plaintiff for the said funds is non-dischargeable.

Defendant's admitted actions constitute "fraud or defalcation while acting in a fiduciary capacity" within the meaning of 11 U.S.C. § 523(a)(4). As such, Defendant's debt to Plaintiff for the said funds is non-dischargeable.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the debt of Defendant Roy L. Allen, II, to Plaintiff Delores Robinson in the amount of \$85,819.25 is determined to be non-dischargeable.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of December, 1999.